



1 Plaintiff Sierra Club, through counsel, alleges as follows:

2 **INTRODUCTION**

3 1. Defendant U.S. Department of Interior (“DOI”) violated the Freedom of  
4 Information Act (“FOIA”), 5 U.S.C. § 552, by failing to produce documents in its possession  
5 following lawful requests by Sierra Club.

6 2. Sierra Club, the nation’s oldest grassroots environmental organization and a strong  
7 supporter and proponent of clean energy sources, sought to further its long-standing interest in  
8 government accountability and transparency by filing a series of FOIA requests for documents  
9 showing communications between DOI officials and external parties. This lawsuit concerns Sierra  
10 Club’s February 20, 2019 FOIA request, which asked that DOI update the results of previous  
11 requests that are the subject of a related case, *Sierra Club v. U.S. Department of Interior*, No. 18-  
12 cv-797 (N.D. Cal.).

13 3. In 2017 and 2019, Sierra Club sent DOI a series of FOIA requests asking for  
14 documents showing certain DOI officials’ external communications. DOI has conducted searches  
15 and has begun providing documents in response to those requests, but has informed Sierra Club  
16 that the searches used to obtain responsive documents are only up to date through March 2018.  
17 DOI also has refused to update its searches to make the results current.

18 4. Consequently, on February 20, 2019, Sierra Club sent a request to DOI asking that  
19 DOI update its searches in response to Sierra Club’s previous FOIA requests. DOI ignored the  
20 deadline required by FOIA and still has not made a determination on Sierra Club’s request, nor  
21 produced all responsive, non-exempt documents, as FOIA required it to do. In doing so, DOI has  
22 violated the law.

23 5. Sierra Club brings this lawsuit to hold DOI accountable, and to respectfully request  
24 that the Court order DOI to produce the external communications requested.

25 6. The records requested by Sierra Club are of significant public interest and concern,  
26 making timely disclosure imperative here. In the first year of DOI Secretary Ryan Zinke’s tenure,  
27 the agency recommended slashing the size of national monuments, opening vast swaths of the  
28 coastline to drilling, and cutting protections for endangered species to make way for private

1 development on public lands. After Secretary Zinke departed in the agency in 2018 amid a rising  
2 tide of ethics inquiries, these activities continued under former Deputy Secretary David Bernhardt,  
3 who was confirmed as the agency's new head in April 2019.

4         7. Under Secretary Bernhardt's leadership, the agency remains embroiled in  
5 allegations of ethical violations. On the fourth day of Secretary Bernhardt's tenure, the agency's  
6 inspector general opened investigations into complaints regarding conflicts of interest and other  
7 ethical matters. Secretary Bernhardt is also being investigated by the U.S. House Natural  
8 Resources Committee for potential ethical violations, including related to his past lobbying work.  
9 Based in part on concerns over the potential conflicts of interest of Secretary Bernhardt and others  
10 within the agency, Sierra Club brings this lawsuit seeking certain DOI officials' external  
11 communications.

#### 12                 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

13         8. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and  
14 28 U.S.C. § 1331.

15         9. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because Plaintiff Sierra  
16 Club has its principal place of business in Oakland, California.

17         10. For the same reason, intra-district assignment is proper in the San Francisco or  
18 Oakland Division. *See* N.D. Cal. L.R. 3-2.

#### 19                 **PARTIES**

20         11. Plaintiff Sierra Club is incorporated in the State of California as a Nonprofit Public  
21 Benefit Corporation with headquarters in Oakland, California. Sierra Club is the nation's oldest  
22 environmental grassroots organization and has more than 782,000 members nationwide. Sierra  
23 Club is dedicated to protecting and preserving the natural and human environment, and its purpose  
24 is to explore, enjoy, and protect the wild places of the earth; to practice and promote the  
25 responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to  
26 protect and restore the quality of the natural and human environments. Sierra Club is a leading  
27 non-governmental organization seeking to educate and mobilize the public on issues related to our  
28 public lands. In support of those efforts and to further Sierra Club's long-standing interest in

1 government accountability and transparency, Sierra Club submitted to DOI the FOIA request at  
2 issue in this case.

3 12. Plaintiff brings this action on its own behalf and on behalf of its members. Plaintiff  
4 and its members have been and continue to be injured by Defendant's failure to provide requested  
5 records within the timeframes mandated by the FOIA. The requested relief will redress these  
6 injuries.

7 13. Defendant DOI is an agency of the executive branch of the United States  
8 government within the meaning of 5 U.S.C. § 551(1). It has in its possession and control the  
9 records sought by Sierra Club and is therefore subject to FOIA under 5 U.S.C. § 552(f).

### 10 **STATUTORY FRAMEWORK**

11 14. FOIA requires that federal agencies promptly release, upon request by a member of  
12 the public, documents and records within the possession of the agency, unless a statutory  
13 exemption applies. 5 U.S.C. § 552(a)-(b).

14 15. Within twenty business days of an agency's receipt of a FOIA request, the  
15 agency must "determine . . . whether to comply" with the request. 5 U.S.C. §  
16 552(a)(6)(A)(i). The agency must "immediately notify" the requester of "such  
17 determination and the reasons therefor." *Id.* If an agency determines that it will comply  
18 with the request, it must "promptly" release responsive, non-exempt records to the  
19 requester. 5 U.S.C. § 552(a)(6)(C)(i).

20 16. If the agency fails to comply with the statutory time limits, the requester is deemed  
21 to have exhausted her administrative remedies. *Id.* District courts may enjoin an agency from  
22 withholding agency records and "order the production of any agency records improperly  
23 withheld." 5 U.S.C. § 552(a)(4)(B).

### 24 **STATEMENT OF FACTS**

#### 25 Industry Influence at the Department of the Interior

26 17. The public has watched closely as DOI has elevated private industry interests at the  
27 expense of protections for public lands. In the first year of Ryan Zinke's tenure as Secretary of the  
28 Interior, Secretary Zinke and his staff took numerous actions that privilege private development

1 over public lands and public health. For example, DOI (i) opened nearly all of the U.S. coastline  
2 to offshore drilling; (ii) delayed the implementation of a rule designed to curb the release of  
3 methane, a potent greenhouse gas; (iii) sought to overturn a moratorium on new leases for coal  
4 mining on federal land; (iii) recommended dramatic reductions in the size of national monuments  
5 such as Bears Ears and Grand Staircase-Escalante in Utah; and (iv) proposed an overhaul of a  
6 comprehensive plan to protect the greater sage grouse so that much of the bird's habitat will be  
7 open to resource extraction. The agency's focus on resource extraction is continuing under the  
8 new Secretary of the Interior, David Bernhardt, who previously served as the Deputy Secretary  
9 under Ryan Zinke.

10 18. The links between industry and DOI's staff are well documented. As a  
11 congressional representative, Former Secretary Zinke was a champion of the leasing of public  
12 lands for mineral extraction. As Secretary, he interacted with fossil fuel interests in the course of  
13 his official duties. For example, DOI's inspector general conducted a formal investigation of the  
14 former Secretary's twelve-thousand-dollar charter flight on a plane owned by oil and gas  
15 executives.

16 19. Secretary David Bernhardt previously worked at DOI under George W. Bush;  
17 while he was there, connections between DOI and industry were widely reported. After his  
18 previous DOI tenure, Secretary Bernhardt worked as a lobbyist on behalf of fossil fuel energy and  
19 mining companies.<sup>1</sup>

20 20. Associate Deputy Secretary of the Interior James Cason also previously served at  
21 DOI under the Reagan and George W. Bush administrations. His positions outside government  
22 have been with industry trade groups and energy interests. He is now reported to be heading a  
23 task force that will cut back regulatory protections for public lands and the environment, and is  
24

25  
26 <sup>1</sup> See Juliet Eilperin, *Zinke's #2 Has So Many Potential Conflicts of Interest He Has to Carry a*  
27 *List of Them All*, Washington Post, Nov. 19, 2018,  
28 [https://www.washingtonpost.com/national/health-science/the-man-behind-the-curtain-interiors-no-2-helps-drive-trumps-agenda/2018/11/18/6403eb4c-e9ff-11e8-b8dc-66cca409c180\\_story.html?utm\\_term=.c1f260601fe1](https://www.washingtonpost.com/national/health-science/the-man-behind-the-curtain-interiors-no-2-helps-drive-trumps-agenda/2018/11/18/6403eb4c-e9ff-11e8-b8dc-66cca409c180_story.html?utm_term=.c1f260601fe1).

1 reported to be leading an effort to reassign dozens of top career officials, including scientists  
2 working on climate change issues, in DOI.

3 21. Principal Deputy Assistant Secretary for Policy, Management and Budget Scott  
4 Cameron also worked as a lobbyist on behalf of fossil fuel interests in the years prior to joining  
5 DOI.

6 22. Assistant Secretary for Policy, Management, and Budget nominee Susan Combs  
7 also has a history of industry connections, having held positions, among others, at the Texas  
8 Public Policy Foundation, which has received funding from the oil and gas industry.

9 23. Bureau of Land Management senior advisor Kathleen Benedetto co-founded the  
10 Women's Mining Coalition, which promotes the mining industry. She has made public statements  
11 in support of weakening environmental regulations, including statements discounting the need to  
12 protect endangered species and treating extinction as a natural process.

13 24. Principal Deputy Solicitor Daniel Jorjani previously served as an advisor to Charles  
14 G. Koch and has been reported to have had extensive industry contacts in his tenure in office so  
15 far.

16 25. Deputy Assistant Secretary for Fish, Wildlife and Parks Aurelia Skipwith  
17 previously worked at Monsanto, and her appointment has been reported to be focused on tackling  
18 the issue of energy development on public lands.

19 Ethical Issues at DOI

20 26. The public also has an interest in DOI's activities in light of the many ethics  
21 investigations focused on the agency.

22 27. Former Secretary Zinke departed the agency in December 2018 amid a cloud of  
23 alleged ethics violations and investigations. Among other things, Former Secretary Zinke was  
24 investigated for allegations of inappropriate travel expenditures and for a Montana land deal that  
25 involved one organization run by the Secretary's wife and another organization backed by the  
26 chairman of Halliburton, a company deeply involved in resource extraction on public lands.

27 28. Ethics inquiries have continued to swarm around Secretary David Bernhardt, the  
28 successor to Former Secretary Zinke. Secretary Bernhardt is the subject of inquiries by the U.S.







1           37.     DOI's recent activities are of significant public interest and concern, making timely  
2 disclosure imperative here. In light of the many recent DOI decisions that appear to privilege  
3 resource extraction and other narrow interests over that of the public as whole, as well as the many  
4 recent ethics probes focused on DOI, it is critical that the public be able to understand the agency's  
5 outside contacts and influences.

6                                   **FIRST CAUSE OF ACTION**

7                                   **VIOLATION OF FOIA, 5 U.S.C. § 552**

8           38.     Plaintiff re-alleges and incorporates by reference all the foregoing paragraphs in  
9 this Complaint as though fully set forth herein.

10          39.     Upon its records request to DOI dated February 20, 2019, Sierra Club became  
11 statutorily entitled under FOIA to receive from DOI all records responsive to its request not  
12 specifically exempted by FOIA.

13          40.     At a minimum, FOIA required DOI to provide Sierra Club with a final  
14 determination upon Sierra Club's February 20, 2019 request on or about March 20, 2019, and to  
15 produce records responsive to the requests immediately thereafter.

16          41.     DOI has failed to provide Sierra Club with a final determination upon Sierra Club's  
17 request, and is thus in violation of FOIA.

18          42.     DOI has failed to produce to Sierra Club any documents responsive to Sierra  
19 Club's request, and is thus in violation of FOIA.

20                                   **PRAYER FOR RELIEF**

21          WHEREFORE, Sierra Club respectfully requests that this Court enter judgment against  
22 DOI as follows:

23               1.     Declaring that DOI has violated FOIA by failing to make a final determination  
24 upon Sierra Club's FOIA request and by failing to produce non-exempt records responsive to  
25 Sierra Club's FOIA request by the statutory deadlines;

26               2.     Ordering that DOI immediately produce the requested records to Sierra Club;

27               3.     Retaining jurisdiction over this matter to rule on any assertions by DOI that certain  
28 records are exempt from disclosure;

- Dated: May 22, 2019

/s/ Ellen Medlin Richmond

Counsel for Plaintiff SIERRA CLUB